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Human Rights Committee

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Summary record of the 2697th meeting

Held at Headquarters, New York, on Tuesday, 16 March 2010, at 10 a.m.

Chair: Mr. Pérez Sánchez-Cerro ..... (Vice-Chair)
later: Sir Nigel Rodley ..... (Vice-Chair)

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In the absence of Mr. Iwasawa, Mr. Pérez Sánchez-Cerro, Vice-Chair, took the Chair.

The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fifth periodic report of New Zealand (*continued*) (CCPR/C/NZL/5; CCPR/C/NZL/Q/5 and Add.1)

1. *At the invitation of the Chair, the members of the delegation of New Zealand took places at the Committee table.*

2. **The Chair** invited the delegation of New Zealand to continue its replies to the oral questions put at the previous meeting by members of the Committee in connection with questions 1-16 on the list of issues.

3. **Mr. Power** (New Zealand), responding to the questions raised by Ms. Keller, said that approximately 550 people had filed claims against the Government for ill-treatment in State-run institutions, most of which pertained to events from the 1980s or earlier. The claims had been funded through legal aid. The Government had settled a number of the compensation claims and was continuing to engage with the remaining claimants. Rehabilitation and other assistance was available through New Zealand's Accident Compensation scheme. The confidential listening and advice service, established in 2008, enabled those who had suffered abuse in State institutions to discuss their experiences and obtain social services and counselling. Claimants were expected to engage directly, rather than through lawyers, but the service did not replace or limit their rights to pursue compensation.

4. With regard to the *E.B. v. New Zealand* case, he reported that according to the most recent publicly available information, counsel for the non-custodial parent had filed an appeal against the Family Court decision in early 2008 and an expanded appeal in September of that same year. The appeal had been heard in November 2008 and, following further written submissions, decided in March 2009. The High Court had held that there was not sufficient information to make a decision about access to the youngest child and directed the parties to seek to agree on a process for resolving the matter within 30 days. The Government would enquire whether any further information could be provided to the Committee, as far as possible within the context of sensitive proceedings.

5. With regard to the questions about the implementation of Security Council terrorist designations, he said that the Government believed that it had a fundamental obligation to comply with Security Council resolutions under Chapter VII of the Charter of the United Nations. The New Zealand Terrorism Suppression Act therefore gave direct effect to designations made under Security Council resolution 1267 (1999). Legislation did not provide for judicial challenges to such designations, except through the proper review procedures determined by the Security Council and the relevant Sanctions Committee, procedures which had recently been significantly improved. As for New Zealand's own designations, once the Prime Minister had made such a designation, any affected person could apply for a judicial review, which could also include a request for suspension of the operation of the designation until the case was decided. As Ms. Chanet had observed, a designation might rely on confidential information which could not safely be disclosed, but the Government considered that to be unavoidable for security-related designations. The Government was committed to fair procedures, but since designation was not a criminal matter, the presumption of innocence did not apply. There had been no instance of a judicial review of a designation to date, not least because the four designations made the previous month had been New Zealand's first.

6. Responding to Mr. Lallah's questions about "Operation 8", he said that all the arrest warrants had indeed been issued on the basis of sworn evidence. The Solicitor-General was required to give consent before charges under the Terrorism Suppression Act could proceed. He had determined that there was not a sufficient basis for the charges in that case, but also that the police had not acted in any way improperly in pursuing them, given the serious threat to public safety. The Government rejected any suggestion that the remaining charges were not serious. He could not comment on the evidence at issue as some remained subject to pretrial challenges to admissibility; however, the charges concerned the intention to undertake violent action with the purpose of inducing terror among the population. Those charged all enjoyed Covenant rights relating to criminal trials and they had all been released on bail, subject to various conditions,

within four weeks of their arrest. Those initially detained had been held in the normal remand prison system. Responding to the concern that the case would not be heard until the following year, he said that the charges were not ready to proceed. The case involved 18 defendants and there had been numerous pretrial applications, some of which were themselves awaiting appeals to be heard in June. The trial was expected to require a further three months of hearings and had been scheduled to allow sufficient time to conclude the pretrial applications and other matters. Due process was being followed very carefully.

7. Responding to Ms. Chanet, he said that preventive detention was a sentence imposed for certain serious violent or sexual offences where there was specialist evidence that the offenders posed a grave risk of reoffending. As a result of the Committee's views in the *Rameka* case, the Government had advised that a sentence of preventive detention would be open to review by the parole board after five years.

8. Turning to the question asked by Mr. Amor about the refusal to allow a witness to testify wearing a burka, he affirmed that the Bill of Rights Act recognized the right to manifest one's religion. However, in that case the court had made an extensive and reasoned assessment of the likely effect of the witness's request on the fairness of the trial. It had held that the request was not acceptable in the circumstances but that, in light of her sincerely held religious beliefs, she could be screened from the accused, but not the judge, lawyers and other court officials. The Government did not consider such reasonable accommodation of religious observances to be discriminatory or anti-democratic.

9. Moving on to the questions asked by Ms. Keller, he said that special policy of granting limited purpose permits to children of foreign nationals unlawfully in New Zealand so they could access compulsory education had been successful. In 2006-7, only 22 permits had been issued to children aged 19 and under for study or other purposes. Since the introduction of the special policy, the number issued had risen to 611 permits in 2007-8, 839 in 2008-9 and 582 thus far in 2009-10.

10. The Immigration Act (2009) allowed for the detention of foreign nationals only when they were denied entry at the border or liable for deportation. However, New Zealand detained very few people for immigration purposes. Neither current legislation nor the Immigration Act allowed for detention on the basis of an asylum claim alone. People were detained only when there were concerns about the safety and security of New Zealand or if they posed a risk to the integrity of the immigration system. The Immigration Act specifically provided that refugees and protected persons who could not be deported could not be detained. New Zealand was not reluctant to grant visas to persons with disabilities: its screening policy was in place to protect public health, largely from communicable diseases. Decisions were made on a case-by-case basis.

11. The Office of Ethnic Affairs undertook a number of measures to counter discrimination, including against women. The Settlement Strategy and its Plan of Action also contained a range of such measures. The Department of Labour funded a national organization to support its programme for the prevention of violence against Asian women, who were mainly migrants.

12. Responding to the question about the differing treatment between asylum-seekers and refugees who were not citizens or permanent residents, he said that very few refugees in New Zealand were not granted permanent residence. Once asylum-seekers had been granted refugee status, in order to be granted residence under the special residence policy they had to establish their identity and meet the generic immigration requirements of good health and good character. Residence could not be granted unless their identity was known, but exceptions to the health and character requirements could be made in most cases. Where there were serious concerns about character, only a temporary work permit might be granted, allowing the person to remain lawfully and to access the workforce and a range of social services.

13. With regard to the question of lifting the limitation on the role of the Human Rights Commission to oversee immigration law and policy, he said that the limitation recognized the nature of immigration itself — requiring decisions to be made on the basis of personal characteristics. However, there were legislative mechanisms to appeal most decisions before dedicated appeal authorities. The Human Rights Commission could investigate complaints and allegations of racism or discrimination in the immigration system, make public statements and report to the Prime Minister about the consistency of

immigration law and policy, as it had done throughout the course of the review of the Immigration Act.

14. Responding to Ms. Majodina's concern that Parliament could enact legislation that was inconsistent with the Bill of Rights Act, he said that in New Zealand, Parliament was sovereign. The opinion of the Attorney-General on compliance with the Bill of Rights Act was an important part of its deliberations, but the ultimate decision as to whether a particular right or freedom had been limited and whether such a limitation was justified lay with the democratically elected Parliament. Thus far, 49 bills had been found by the Attorney-General to be inconsistent with the Act. Of those bills 19 had been enacted as introduced, 9 bills had been enacted after being amended during the legislative process to address the Attorney-General's concerns, and 21 had not been enacted. There was merit in the suggestion that the Attorney-General should provide advice on the consistency of every bill with the Bill of Rights Act, rather than only bills that appeared to be inconsistent. It was worth noting that, since 2003, all advice from the Ministry of Justice and the Crown Law Office to the Attorney-General had been published on Ministry websites, helping to ensure that information about every bill was available both to the House and to the public. There was also merit in the suggestion to table New Zealand's reports to the Human Rights Committee in the House, even though they were Government reports and did not require the approval of the House of Representatives. Nevertheless, in order to raise awareness of Covenant rights, the Government would consider the idea in the future.

15. New Zealand had committed to review its statutory protections of rights and freedoms, and many issues would be considered. As a first step, officials from the Ministry of Justice had discussed the matter with the Human Rights Commission and with wider civil society. The discussions had been extremely positive and highlighted areas for further consideration.

16. With regard to Ms. Keller's question about the Human Rights Review Tribunal, he said that the Government might consider extending its powers in any future review of the protection of rights and freedoms in New Zealand. For the time being, however, the New Zealand courts had discussed the issue but had not yet determined whether there should be a formal power to issue declarations that legislation was inconsistent with the Bill of Rights Act.

17. Turning to the matter of targets for the recruitment of women, he said that in 2009, the Prime Minister, John Key, had launched a new initiative, in partnership with the Minister of Women's Affairs, Business New Zealand — the country's largest business organization — and the Institute of Directors in New Zealand. Its aim was to present the case for women on boards from a business perspective and it actively advocated for more women in corporate governance. In another private sector initiative, a group of prominent New Zealand businesswomen, including the former Prime Minister Dame Jenny Shipley, had been established to push the case for female directors, provide governance, training and mentorship. It was not strictly correct to say that there were no targets for the employment of women: the former Prime Minister Dame Jenny Shipley had announced in 1995 a target of 50 per cent women appointed to Government statutory boards by 2005. The target had been extended to 2010 by the then Minister of Women's Affairs and had informed the recent work of the current Minister. Speaking as the Minister of State Owned Enterprises, he could confirm that the Minister of Women's Affairs was actively pursuing the issue. The Cabinet also actively considered the representation of women during the appointment process for a range of Government bodies.

18. Addressing Mr. O'Flaherty's question about the New Zealand Action Plan for Human Rights, he said that the Government had supported the Plan's development by the Human Rights Commission, but had chosen not to formally adopt it. It directed departments to consider implementing the Plan's priorities for action as part of their normal business and to identify such work in their statements of intent and annual reports. That approach encouraged direct dialogue between the Commission and the departments and allowed for the greatest flexibility.

19. All persons detained on mental health grounds had prompt access to judicial review, as specified in the Mental Health Compulsory Assessment and Treatment Act (1992). In addition, the inspection system for persons in mental health facilities was consistent with the United Nations Principles for the Protection of Persons with Mental Illnesses and for the Improvement of Mental Health Care. All patients could make complaints, which were investigated by district

health inspectors and reported to the area directors of mental health services. The Ombudsman had been designated as a national preventive mechanism and, as of June 2009, had made 89 visits to mental health facilities. With regard to the Auditor-General's report of the deficiencies in the care of prisoners with mental illnesses, he said that the Ministry of Health, District Health Boards and the Department of Corrections worked closely together to ensure they were treated appropriately and remained safe. The Auditor-General's report had highlighted problems resulting from the increasing number of prisoners and the high demand for inpatient beds, but confirmed that the needs of prisoners with severe mental illnesses were generally well met. Responsiveness was more limited for those with mild or moderate illnesses or personality disorders. The availability of inpatient beds had been identified as an issue for women in particular, and the importance of shaping services to Maori cultural needs was also a consideration. The Government was actively considering those matters.

20. With regard to the high numbers of Maori in the prison population, women in particular, the Government believed it to be due to the complex drivers of crime. The Drivers of Crime summit had been a first step in changing the emphasis towards preventing crime. The Government had no direct evidence to support the case for any institutional bias, but recognized that the disproportionate representation of Maori needed to be the focus of its work on drivers of crime.

21. Turning to Mr. Lallah's question about prison management, he said that private management provided opportunities for innovation and change. However, it was also important to specify standards clearly. Performance was closely monitored in a number of ways. Profit levels would not be monitored, but all tenders would be competitive.

22. With regard to Ms. Chanet's question about the age of criminal responsibility, he said that in New Zealand the age was 10 for murder or manslaughter and 14 for most other offences. The Government had no plans to change them. The difference in the age was a reflection of the fact that murder and manslaughter were a special category of crime and required that the offenders be held accountable for their actions. In such cases, the prosecution must prove that the child knew the act to be wrong or contrary to the law, in addition to meeting the normal burdens for any other criminal matter.

23. **Mr. O'Flaherty** welcomed the information that targets for the recruitment of women were used to some extent. With regard to the status of the New Zealand Action Plan for Human Rights, he noted that all the merits of the Government not officially adopting the Plan could equally apply if it did, so he strongly encouraged the Government to reconsider its position and to place human rights at the heart of Government. It would be an opportunity to demonstrate leadership internationally and to share the country's good practices in the area of human rights.

24. **Ms. Chanet** noted that her question on reservations had not been addressed. With regard to the use of tasers, she could see that many precautions were being taken but accidents could still happen. Tasers had been found to be much more dangerous than originally thought.

25. She reiterated her concern about the use of concealed evidence in counter-terrorism law, even though there had been no actual cases. She hoped that when such a situation arose, the Government would take account of the observations that had been made regarding the difficulties concerning due process posed by such evidence. The fact that evidence was concealed did not in itself make it true — there was a strong chance that adversarial proceedings could show the evidence to be false. On the issue of preventive detention, she noted that a recent case in the European Court of Human Rights against Germany had supported her view with regard to arbitrary detention and violations of article 9 of the Covenant. In that case, the Court had found that there had been unlawful detention in violation of article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, because the danger was not sufficient to constitute a legal basis.

26. **Ms. Majodina** said that, though she appreciated the rationale for the method of implementing the Covenant in New Zealand, there was still some concern that the Bill of Rights Act had the status of ordinary legislation rather than being a set of constitutional rights. With regard to the discussion of the *Chapman* case, she would appreciate further clarification whether the Government believed there were certain categories of breaches of the Bill of Rights Act for which no monetary compensation was available, regardless of

how egregious the breach. If so, she invited the delegation to comment on the consistency of that belief with article 2, paragraph 3, of the Covenant. Turning to the matter of access to judicial review for persons detained on mental health grounds, she remained concerned about the nature of the review available. Reports from non-governmental organizations had suggested that the reviews took an average of only 10 minutes, with no consideration of the Bill of Rights Act or the Covenant.

27. **The Chair** said that the response to the question regarding the *Chapman* case should be made in writing within 48 hours.

28. **Mr. Amor** asked the delegation to clarify whether the role of New Zealand in implementing the relevant sanctions against those individuals or entities on the list of the Security Council Committee established pursuant to resolution 1267 (1999) was simply automatic. With regard to the case of the witness who had not been allowed to testify wearing a burka, he noted that demonstrations of religion must take account not only of article 18, paragraph 3, of the Covenant, but also of articles 2, 3 and 26. Following the logic of the judge in that case, would women wearing burkas only be able to show their identity cards, when requested, to women, for example? He therefore asked whether the delegation considered the case cited to be an isolated one, or whether it was established jurisprudence.

29. **Ms. Keller** said that she was impressed with the legal framework for the use of tasers that had been described. She was, however, concerned about how it would work in practice — when and how were the trained officers supposed to get the necessary permission from a second person in order to open the box containing the taser while on duty? In relation to question 9, she noted that she had seen how effectively a State Party could integrate its indigenous people through her experiences living in Norway. A good relationship with the Maori party was not the same as an established formal consultation process and integration. With regard to the *E.B. v. New Zealand* case, she encouraged the delegation to use the example of the communication to reconsider national law and policy. It was somewhat bittersweet for an individual to have the impression of winning a case before the Committee but for no change to result in the individual's situation.

30. **Mr. Lallah** noted that the delegation had not addressed the question of the principle of privatization in the management of prisons with regard to State responsibility and the guarantees relating to the appointment of staff by the public sector. Regarding the responsibility to comply with Security Council resolutions 1267 (1999) and 1373 (2001), he noted that they did not require a State Party to breach its treaty obligations, which was why he had envisaged the possibility of interim measures in case of need.

31. **The Chair** invited the delegation to address questions 17-27 on the list of issues (CCPR/C/NZL/Q/5).

32. **Mr. Power** (New Zealand), introducing the delegation's responses to questions 17-27 on the list of issues (CCPR/C/NZL/Q/5/Add.1), said that the New Zealand Plan of Action to Prevent Trafficking in Persons, released in July 2009, had been an important development, setting out a range of short-, medium- and long-term goals for government agencies. The Plan gave New Zealand the tools to fight trafficking and protect its victims. Although no cases of human trafficking had yet been detected in New Zealand, the police thoroughly investigated all allegations. Trafficking was a serious criminal offence and carried a maximum penalty of 20 years imprisonment and/or a fine of up to $500,000. The police and social agencies were equipped to identify possible cases and respond to the needs of any victims.

33. Responding to question 18 on the list of issues, he said that the Immigration Bill (2007) had been enacted but had yet to come into force. The "screening process" was used to check the immigration status of travellers boarding aircraft bound for New Zealand. Those who were not entitled to travel to New Zealand were denied boarding by the airline. Concerns had been expressed about the programme by the Human Rights Commission and other bodies, but the programme simply checked the passenger's name and other identifying details against the record of their immigration status to ensure that they would be allowed entry upon arrival. If a passenger who was denied boarding stated their intention to claim asylum, the airline would refer them to the closest office of the United Nations High Commissioner for Refugees. Where a claim was made offshore, the claimant invoked the obligations of the country in which the claim was made. Where a passenger travelled to New Zealand and made a claim of asylum, New Zealand determined that claim consistently with its

international obligations. All claimants had a right of appeal to a dedicated appeal authority and could make further appeals in the New Zealand courts. Where a person was not successful in an asylum claim, and had completed any appeals, they could be removed from New Zealand. In order to ensure that the country continued to act in a manner consistent with its non-refoulement obligations, the Department of Labour conducted interviews prior to any proposed removal to assess any protection or humanitarian needs.

34. Turning to question 19, he recalled his discussion of New Zealand's anti-terrorism regime at the previous meeting. The Terrorism Suppression Act did not remove or narrow the presumption of innocence in any way. If any charges were brought under that Act, the burden would be on the Crown to prove all the elements of the offence beyond reasonable doubt. Recalling also the discussion of the *Hansen* case, in which the Supreme Court had found the Misuse of Drugs Act to violate the presumption of innocence, he explained that the New Zealand Law Commission had released an issues paper on the control and regulation of drugs which addressed, among other matters, the problems of proof that the presumption of supply sought to remedy. The Commission had suggested various options and called for comments before the end of April. The Government would prepare its formal response to the final report of the Commission when it was released. However, he reiterated that rewriting the Misuse of Drugs Act was not a priority.

35. Responding to the Committee's enquiry about the provisions of the Criminal Investigation Amendment Bill (2009), which permitted the expanded collection and retention of DNA samples, he stressed that measures had been put into place in order to minimize intrusion on the rights of individuals. As noted in the written replies, the Attorney-General had found the bill to be inconsistent with section 21 of the Bill of Rights Act. Parliament had taken notice of those concerns during the select committee process and had made a number of amendments to the bill, in particular improving the process for taking samples from young people. Guidelines had also been developed to assist the police.

36. Addressing question 21 on the list of issues, he noted that the High Court had held that the Speaker of the House of Representatives and the Police had acted contrary to the right of peaceful assembly under the Bill of Rights Act, which paralleled article 21 of the Covenant. The Court had stayed the trespass charges, holding that the Speaker had failed to balance the rights of the protesters against such factors as interference with access to parliamentary buildings. A number of compensation claims under the Bill of Rights Act had been brought, and had recently been resolved with financial settlements.

37. Moving to the issue of the rights of the child, he noted that in an official non-binding Citizens Initiated Referendum, the majority had voted to reinstate the defence in section 59 of the Crimes Act permitting the use of reasonable force against a child for the purpose of parental correction. In acknowledgement of the results, the Government had asked the Ministry of Social Development to look into the matter. It had found no evidence of parents being subjected to unnecessary State intervention for lightly smacking children. The Police would continue to report regularly on the operation of the law over the following three years. The Government did not intend to reinstate the defence under the current circumstances.

38. The rates of child abuse in New Zealand had risen substantially between 2004 and 2008 and were unacceptable. In response, in October 2009, Parliament had enacted the Domestic Violence (Enhancing Safety) Act, which allowed the Police to issue on-the-spot protection orders. In December 2008, Parliament had amended sentencing laws to the effect that the defencelessness of children became an aggravating factor in the sentencing of adult offenders. The Government had also agreed to amend the Crimes Act, introducing a new provision to make it an offence for an adult member of the household to fail to act if they knew that a child was being subjected to sexual abuse or was at risk of serious injury or death. In September 2009, the Government had announced a number of initiatives as part of a campaign to stop child abuse, including: a national public information campaign to ensure that parents and other caregivers knew they must never shake a baby; placing Child, Youth and Family social workers in key hospitals; multi-agency safety plans requiring protection agencies to meet whenever a suspected abuse victim was admitted to hospital, to ensure that the child had a safe home to go to upon leaving the hospital; a "preventing shaken baby syndrome" programme, instructing new parents on how to look after a crying baby; and the creation of an Independent Experts Forum to identify ways to prevent child abuse and stop its reoccurrence. The

Police, Department of Child, Youth and Family, and the Ministry of Health were also working together to develop a protocol for collecting information, in order to improve monitoring systems and obtain an accurate picture of abuse incidents. The Law Commission had been requested to give priority to its review of offences against the person, with special regard to offences against children and to ensuring that penalty levels for those offences were consistent with penalties for other assaults.

39. With regard to the question about the age of criminal responsibility for murder and manslaughter, the Government had no plans to raise the age. Prosecutions against 10 to 13 year-olds for such offences was extremely rare. It was important to note that not only was there a higher burden of proof for convicting a child, but also that, in the case of murder, the Court could impose a lesser sentence if imprisonment for life would be manifestly unjust.

40. Turning to the question about electoral reform, he noted that the Government had repealed the Electoral Finance Act (2007) in 2009 and enacted an interim regime while it began the process of creating a new regime. All parliamentary parties and the Human Rights Commission had been consulted at each stage of the review process. The public had been given the opportunity to comment on two occasions: first, on an issues paper released in May 2009; and second, on a proposal document released in October 2009. The new legislation had recently been announced and would be introduced in Parliament shortly. The changes would require disclosure of the total amount of donations that parties received, expressed in bands, the amount of money that parties and candidates could spend on campaigning would be increased, tied to the rate of inflation for each general election, and people who spent more than $12,000 on parallel campaigning would be required to register publicly with the Electoral Commission. Another area of electoral reform was the establishment of a new independent electoral administration body. An Electoral (Administration) Amendment Bill had been introduced to Parliament, transferring all functions relating to the administration of elections to the new body. Lastly, a referendum to gauge voter satisfaction with the Mixed Member Proportional Representation voting system was due to be held in conjunction with the 2011 general election.

41. Turning to question 26 on the list of issues, he acknowledged that the Treaty of Waitangi continued to be the central focus for the ongoing and evolving relationship between the Maori and the Crown. It had been the subject of much discussion, as reflected in the reports from non-governmental organizations and the Human Rights Commission. The Treaty's place in New Zealand's constitutional arrangements was not static, but was a subject of continued debate and judicial interpretation. Consideration of the Treaty was built into the law-making process in New Zealand. All Ministers seeking approval to introduce bills into Parliament must indicate whether they were consistent with the principles of the Treaty. The Treaty was also incorporated into a range of domestic legislation. Regardless of whether a particular Act referred to the Treaty, the Courts had interpreted relevant legislation in a manner consistent with the Treaty whenever possible.

42. The Waitangi Tribunal investigated claims that the Crown had acted inconsistently with the Treaty, and made recommendations to the Government. The Crown had accepted an obligation to take steps to redress the historical wrongs visited upon the Maori in breach of the Treaty of Waitangi. Redress could take a number of forms, ranging from financial settlement to an apology. Since February 2009, the Government had entered into 11 agreements-in-principle and signed 5 Deeds of Settlement. The Tribunal had received an increase in funding in 2007, bringing its current level of funding to $12.15 million per year, which the Government considered sufficient for it to carry out its functions.

43. Turning to the last question on the Committee's list of issues, he said that a draft of New Zealand's fifth periodic report had been circulated for public comment in October 2007 and the Ministry of Justice had specifically sought feedback from non-governmental human rights organizations and met with representatives of the Human Rights Commission. The Ministry had received 14 submissions, which were considered during the preparation of the final report. In light of a recommendation in the recent universal periodic review, the Government was considering ways to improve consultation with non-governmental organizations. The Ministry of Justice had met with various non-governmental organizations in late 2009 to discuss the best format for such consultation. Information about the Covenant was available from the Ministries of Justice and Foreign Affairs and Trade.

The latter also produced a handbook containing the texts of all the main human rights treaties, links to which could be found on relevant Government websites.

44. **Mr. O'Flaherty** said that while the development of an action plan on trafficking was very welcome, it had been extremely surprising to hear that the Government was not aware of any trafficking incidents. He had never heard such a statement before, from any country. A website which tracked information from expert groups such as End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT) stated that women were trafficked to New Zealand from Malaysia, Hong Kong, China and other Asian countries for commercial sexual exploitation and that there was internal trafficking in New Zealand of women and children for commercial sexual exploitation. The same source also noted cases of debt bondage and of women involved in prostitution whose passports had been confiscated. Further detail on the issue would be appreciated.

45. Perhaps de facto trafficking had not been labelled as such, or perhaps trafficked people had been identified or pursued in the context of prostitution legislation. Certainly not everyone involved in prostitution had been trafficked, but it was well known that some of them were. He asked if the definition of trafficking used was completely coterminous with the Palermo Protocol definition or with the definition in the International Labour Organization Convention No. 182 on the worst forms of child labour. In addition, information on efforts to combat internal trafficking would be appreciated, as would information on how trafficking victims' rights were protected in the context of the New Zealand Action Plan for Human Rights. Specifically, the Committee wished to know whether the action plan provided for the delivery of support to victims who did not participate in the criminal process and for support for humanitarian leave to remain within the jurisdiction, and, if so, for what period of time.

46. The reply to the list of issues mentioned a plan to develop operational guidelines for the police on the gathering of DNA samples. Clarification was requested as to why the issue was being dealt with in the operational guidelines rather than at the statute level. The operational guidelines stated that individuals would be identified on the basis of statistical modelling for the purpose of gathering DNA, suggesting that profiling was being used to determine who DNA would be gathered from. If that was indeed the case, more information was needed on measures taken to ensure consistency with human rights and whether members of certain ethnic groups were more likely than others to have their DNA tested. The Human Rights Committee had recently issued a decision in a communication stating that racial profiling was a violation of the Covenant.

47. Efforts to cooperate with representatives of civil society to disseminate information about the Covenant had been mentioned and information about the results would be appreciated. An ongoing dialogue with civil society representatives in New Zealand which integrated all the proceedings and findings of international human rights bodies was worth considering.

48. **Ms. Majodina** said that the recently passed Immigration Act did not give much attention to the detention of asylum-seekers. Under international law, asylum-seekers should not be detained unless there were substantial grounds for doing so, and they should be detained separately from criminals. The authorities of New Zealand were requested to review the issue.

49. The concept of a safe third country, which allowed officials to decline to consider an application for asylum on the grounds that the petitioner could apply in another country, was also cause for concern. People who reached New Zealand generally passed through other countries which were not party to the 1951 Refugee Convention. Therefore, the concept of a safe third country was not appropriate to New Zealand.

50. **Mr. Lallah** said that New Zealand law was in clear violation of article 14, paragraphs 1 and 2, of the Covenant. While the New Zealand Law Commission had been tasked with looking into the matter, the Government had indicated that it was not a priority. The obligations under article 14 were central to the operation of a criminal justice system, and the violation of that part of the Covenant was a very grave one.

51. The concept of the separation of powers existed in New Zealand. However, while it was within the exclusive competence of the courts to assess evidence and to determine the burden of proof, there was legislative intrusion in that province.

52. According to a non-governmental organization, condemned youthful offenders were sent to camps

where they received military-style training. The principal judge for young offenders had described the system as "a spectacular, tragic, flawed failure". The training made youthful offenders fitter and faster, but did not rehabilitate them. Children had rights under the Covenant, and they also had special rights. It would seem that those rights were being violated.

53. The Committee had been told that there were very few offenders between the ages of 10 and 13. If that was the case, why was the minimum age of criminal responsibility for murder and manslaughter not raised? Attention should be given not only to the seriousness of the offence, but also to the maturity of the accused at that age.

54. Politicians tended to lose their enthusiasm for electoral financial reform when their party came to power. The abuse of electoral campaign financing could have a nefarious effect on citizens' right to vote and put in place a Government which gave effect to its will.

55. The centralization of local government in the region of Auckland had had some negative results. There were no Maori seats in the governing body, despite the large Maori population in the area. Under article 25 of the Covenant, the Maori had the right to play an effective role in governing. A proposal to set aside seats for them had been advanced, but they had instead been relegated to an advisory body.

56. It had been said that the Government constantly bore the Treaty of Waitangi in mind when enacting legislation and formulating national policy. However, if that were truly the case, there would be more meaningful Maori participation in the new governing body of Auckland. It was hoped that some day the State party would find a way to give real legal meaning to article 26 of the Covenant. There had been an agreement with the indigenous people of the country, and they should receive consideration in the constitutional system, not just in the laws.

57. Information should be provided to citizens generally, as well as to the judiciary and to legislators, about New Zealand's experience with the international human rights treaty system. The periodic report and the concluding observations of the Committee should be tabled in Parliament. In order to increase awareness at the judicial level, judges could be briefed informally through the national Human Rights Commission about what had taken place during the ninety-eighth session of the Human Rights Committee.

58. **Ms. Keller** requested clarification regarding settlement of the *Police v. Beggs* case and, in particular, what sums had been provided as financial settlements. Absolute numbers were less important than explanations as to why the various parties had received different settlements. Similar information would also be appreciated in regard to the Treaty of Waitangi. Reference had been made in the oral response to commercial, cultural and historical redress. Such redress could range from financial settlement to apology.

The meeting was suspended at noon and resumed at 12.15 p.m.

59. *Sir Nigel Rodley, Vice-Chair, took the Chair.*

60. **Mr. Power** (New Zealand) said that the fact that New Zealand required most foreign nationals to apply for permission to travel to and stay in the country might be one reason why it had been somewhat protected from trafficking. The police investigated all claims of trafficking, but had yet to identify a case. The plan of action envisaged increased training for all those who might identify victims of trafficking. Public awareness was important, as the public would be central in assisting with prevention and prosecution. New Zealand had adopted the definition of trafficking as given in the Palermo Protocol, which covered only transnational trafficking. Because New Zealand did not have a federal system, internal movements of people were not considered trafficking. National criminal law included measures to punish abduction, assault, kidnapping, rape, engaging under-age prostitutes, coercing prostitutes and exploitation of labourers. The Crimes Act prohibited sexual conduct with children and criminalized the organization or promotion of child sex tours.

61. The Government of New Zealand was completing work on a policy to protect victims of trafficking that addressed whether trafficked victims could stay in New Zealand on humanitarian grounds. It was anticipated that the policy would be in place within months. In the meantime, New Zealand had the capacity to respond to victims on a case-by-case basis and ensured that they received needed support.

62. Policy currently being established would address the issue of support for victims who were not part of

the criminal process. The approach would be consistent with international best practices. In the plan of action, victims were afforded protection and assistance, and traffickers were prosecuted to the fullest extent of the law. The website to which Mr. O'Flaherty had referred also noted that reports on trafficking in New Zealand were not complete or necessarily relevant to the current discussion.

63. The Immigration Act 2009 was consistent with the principle of non-return and enhanced the commitment of New Zealand to its immigration obligations. The Act contained new procedures for determining refugee and protection obligations under the United Nations Convention Relating to the Status of Refugees, the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights. Anyone could claim asylum in New Zealand and have the right to have their claim heard. Under the Act, no asylum claimant, person recognized as a refugee or protected person could be deported.

64. New Zealand desired to make civil society participation in reporting procedures easier. In October 2009, the Ministry of Justice and the Human Rights Commission had sought the views of non-governmental organizations across New Zealand regarding how and when they wanted to be consulted. The response had highlighted the need to improve the dissemination of information throughout the reporting period. Online resources could be better used to keep civil society informed and receive feedback.

65. The tabling of reports to make decision makers more aware of human rights obligations had been discussed. The Institute of Judicial Studies was responsible for training the judiciary, and it had developed a training programme on the human rights instruments. While the Institute was aware of developments in the treaty bodies, the emphasis of the programme was practical, with attention given to issues which came before the courts on a regular basis.

66. The Government position on the age of criminal responsibility and on the issue of stressing the maturity of the defendant rather than the gravity of the crime had already been outlined. The age of criminal responsibility had been set at 10 since 1961. Prior to that the age of criminal responsibility had been seven.

67. A DNA profile could not be extracted until charges had been made. Only the profile was retained, not the sample, and the misuse of DNA profile information had been criminalized. There must be a specific and sufficient basis for taking a sample, and circumstances under which a sample could be taken were limited. Racial profiling was not part of DNA collection. DNA was collected based on the offence charged. The reference to statistics had to do with the scientific method for processing the sample.

68. Electoral finance reform had been designed to be enduring precisely because it was unacceptable for electoral law to change each time a new Government came to power. All political parties in Parliament had been drawn into the process of developing the reform to guarantee that it lasted beyond any single Government.

69. Maori representation through dedicated seats in the new local government in Auckland had been much discussed in New Zealand. The absence of dedicated Maori seats did not prevent their full participation in elections, as they also could run as general candidates. While there were seven dedicated Maori seats in the New Zealand Parliament, there were 20 members of Parliament who identified themselves as Maori.

70. There was a very broad range of programmes in New Zealand designed to turn young people away from criminal activity, some of which contained a structured exercise component. Such programmes had proven popular with many young people, who regarded them as pivotal or life-changing. Their purpose was not to instil military behaviours or values. They focused rather on personal responsibility and goal-setting and also had a rehabilitative function.

71. In New Zealand, it was permissible under some special circumstances to expect an accused person to respond to specific aspects of a charge. That was consistent with case law in other States parties. Since the election of the new Government in late 2008, the Justice Ministry had had a very high volume of work. The concern expressed at the fact that the issue was not a priority had been noted.

72. Financial settlements in the *Police* v. *Beggs* case were not confidential. A total of 150,000.00 NZD in compensation had been paid out to 41 claimants, with amounts varying depending on how much time each individual had spent in detention.

73. Settlements and redress involved acknowledgement of wrongdoing, including solemn, formal and detailed public apologies by the Government. As at 30 June 2009, financial and commercial redress, including return of lands and payment of money, totalled 1,057,000,000.00 NZD. Cultural redress was also an important component of the process. The Government took the process very seriously. It was regarded as a crucial step in the healing of the wrongs which had occurred over a long period of time.

74. **Mr. O'Flaherty** said that it was inaccurate to say that the Palermo Protocol did not embrace internal trafficking. While the Protocol was attached to the Convention against Transnational Organized Crime, it did not contain the element of the necessity of crossing a frontier.

75. Where the State party found itself unintentionally in situations of racial profiling in the course of DNA collection, it must take every possible measure to prevent what would be an unacceptable practice.

76. **Mr. Lallah** said that a group of Maori landowners in the northwest had been negotiating a settlement with the Government for some time. Because they did not agree with what had been offered to them, they had appealed urgently to the Waitangi Tribunal, but their application had been rejected. The Government planned to go ahead with the settlement. The Human Rights Committee had decided a range of cases under article 27 of the Convention regarding protection of indigenous ways of life. Perhaps negotiations should continue before the settlement was enacted into law. The Government should bear in mind that way of life and relation to land were protected under the Covenant.

77. **Ms. Majodina** said that she looked forward to written replies on issues she had raised to which the delegation had not responded orally, due to time constraints. Those issues included the *Chapman* case; procedures for and nature of judicial review for persons detained on mental health grounds; and detention of asylum-seekers and the concept of a safe third country for asylum-seekers.

78. **Mr. Power** (New Zealand) said that the reporting process before the Human Rights Committee was robust and detailed. The level of knowledge which Committee members brought to bear was most welcome. A core value for New Zealand in the field of human rights was integrity in regard to the areas where improvements could be made. Human rights should be relevant to the daily lives of New Zealanders, as well as to the lives of people around the world.

The meeting rose at 12.50 p.m.